

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

Manuel Esquivel, individually and as a
representative of a class of similarly situated
persons, on behalf of the WHATABURGER
401(k) SAVINGS PLAN (f/k/a the
Whataburger Profit Sharing and 401(k) Savings
Plan),

Case No. 5:24-cv-310-XR

Plaintiff,

v.

WHATABURGER RESTAURANTS LLC;
THE BOARD OF DIRECTORS OF
WHATABURGER RESTAURANTS LLC;
THE WHATABURGER 401(K) SAVINGS
PLAN ADMINISTRATIVE COMMITTEE
(f/k/a the Whataburger Profit Sharing and
401(k) Savings Plan Administrative
Committee); and DOES No. 1–20, Whose
Names Are Currently Unknown,

Defendants.

**UNOPPOSED MOTION FOR EXTENSION OF TIME FOR WHATABURGER TO
FILE REPLY IN SUPPORT OF MOTION TO DISMISS**

Defendants Whataburger Restaurants, LLC, the Board of Directors of Whataburger Restaurants LLC,¹ and the Whataburger 401(k) Savings Plan Administrative Committee (collectively, “Whataburger” or “Defendants”), by its undersigned counsel, respectfully move this Court for an order extending Whataburger’s deadline to file a reply brief in support of its Motion to Dismiss Plaintiff’s Complaint from July 8, 2024 to July 15, 2024. In support of this motion, Defendants state as follows:

¹ This entity does not exist.

1. Plaintiff filed the Complaint in this action on March 27, 2024. (ECF No. 1.) The Complaint spans 95 paragraphs and 31 pages and asserts three claims that Defendants their its fiduciary duties under the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1001 et seq., in relation to the Whataburger 401(k) Savings Plan (“the Plan”).

2. Defendants filed their Motion to Dismiss Plaintiff’s Complaint on June 17, 2024. (ECF No. 23.)

3. Plaintiff filed his Response in Opposition to Defendants’ Motion to Dismiss Plaintiff’s Complaint on July 1, 2024. (“Plaintiff’s Opposition”) (ECF No. 25.)

4. Defendants’ reply brief is currently due on July 8, 2024, under Local Rule CV-7(E)(2).

5. Defendants seek an additional seven (7) days to file their reply brief.

6. On July 2, 2024, Christopher Dempsey of Morgan, Lewis & Bockius LLP, undersigned counsel for Defendants, contacted Plaintiff’s counsel, Miller Shah LLP. James Shah of Miller Shah LLP stated that Plaintiff does not oppose Defendants’ request that this Court extend the time for Defendants to file a reply until July 15, 2024.

7. There is good cause for the unopposed extension, and it will not cause delay in the overall proceeding.² Plaintiff’s Opposition raises numerous arguments against the Defendants’ Motion to Dismiss that require more than seven (7) days to adequately respond. In addition, the Fourth of July, a Federal holiday, takes place while Defendants will be preparing the reply. An extension of an additional seven (7) days will allow a reasonable amount of time for Defendants to respond to Plaintiff’s Opposition.

² Defendants note that the Court has scheduled a hearing on the Motion to Dismiss for August 1, 2024. To the extent the Court desires more time to review the Motion to Dismiss briefing, Defendants conferred with Plaintiff, and neither party opposes a rescheduling of the hearing.

8. This is the first request for an extension related to Defendants' reply brief in support of its Motion to Dismiss, and no prejudice to any party will result if this motion is granted.

WHEREFORE, Defendants respectfully request that this Court extend Defendants' time to file a reply brief to July 15, 2024.

Dated: July 2, 2024

By: /s/ Lauren A. Valkenaar

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via the Court's ECF/CM e-filing system to all counsel of record who are deemed to have consented to electronic service on this 2nd day of July 2024.

/s/ Lauren A. Valkenaar